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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/440,340	11/15/1999	ERIC CHRISTIAN HINCE		2831

7590 06/29/2004  
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EXAMINER

WARE, DEBORAH K

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/440,340	<b>Applicant(s)</b> HINCE ET AL.	
	<b>Examiner</b> Deborah K. Ware	<b>Art Unit</b> 1651	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 24-26, 28-46 and 48-77 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-26, 28-46 and 48-77 is/are rejected.
- 7) ☒ Claim(s) 68-74 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. <u>7/1/03</u> |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____   |

### **DETAILED ACTION**

Claims 24-26, 28-46, 48-77 are pending. Note claims 27 and 47 are canceled.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 28, 2004, has been entered.

### ***Response to Amendment***

In response to Applicants alleged recollection of two telephone interviews of July 1, 2003 and July 14, 2003, the record shows only one telephone interview of July 1, 2003, of which a copy is enclosed herewith.

Applicants' response has overcome all rejections except the following:

### ***Claim Objections***

Claims 68-74 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The claims do not further limit the claim 24 for reasons of record, note the action of January 28, 2004. Further, the claims do not further limit the claims since the composition is unchanged and an intended use of cultivation does not further define any additional limitation of the claimed composition. The composition contains the plant fiber containing material and

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although Applicants argue that it is not the dry mixture itself being cultivated in-situ, but the plants that comprise the plant fiber-containing material it is the composition that comprises the plants per se and the composition remains unchanged by the claims of 68-74. Examiners fail to see how the claims of 68-74 further limit the subject matter of the claimed composition of which a dependent claim is required to do under this patent rule as noted above.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 33, 38-43, 53, 58-63, 68-74, and 77 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 33 is rendered vague and indefinite for the recitation of “, cotton lint” at line 3 wherein the Markush group does not recite its last component using the closed term –and—of which is suggested to be inserted before “cotton lint” at line 3.

Claims 38-43 are rendered vague and indefinite for failing to set forth proper antecedent basis for “said plant materials” and the term –fiber-containing—is suggested to be inserted before “materials” at each first occurrence in the claims, note line 2 of each of claims 38-43. Also some of these claims are dependent upon rejected base claim 33 and hence are rejected for this reason as well.

Claims 53 and 58-63 are rejected for being dependent upon rejected base claims for reasons noted above.

Claims 68-74 are rendered vague and indefinite because the metes and bounds of the claims can not be determined. The language "said plant fiber-containing materials are cultivated in situ within contaminated environmental media" since it is unclear whether the whole composition is being added to the media or whether the plant materials are separated from the composition and then added to the media.

Claim 77 is rendered vague and indefinite for depending from rejected base claims as set forth in claim 77, notably claims 53, 58-63 as discussed above.

### ***Double Patenting***

Claims 24-26, 28-46, and 48-77 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-32 of U.S. Patent No. 6,423, 531 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because of those reasons of record, specifically note page 17, paragraph 11, all lines, office action of March 24, 2003 and pages 8-9 of Office action of January 28, 2004.

Applicant's arguments filed April 28, 2004, have been fully considered but they are not persuasive. The request to reconsider the rejection was honored, however, the claims remain obvious over the patented claims as set forth of record and noted above. A timely Terminal Disclaimer is requested.

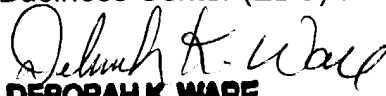
No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 571-272-0924. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

  
**DEBORAH K. WARE**  
**PATENT EXAMINER**

Deborah K. Ware  
June 14, 2004